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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,252	04/05/2001	J. Charles Taylor	39292/256238	5171

30559 7590 11/18/2002

CHIEF PATENT COUNSEL  
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EXAMINER

HO, UYEN T

ART UNIT PAPER NUMBER

3731

DATE MAILED: 11/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/827,252

Applicant(s)

TAYLOR ET AL.

Examiner

(Jackie) Tan-Uyen T. Ho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 March 2002 and 11 July 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 is/are allowed.
- 6) ☒ Claim(s) 15-35 is/are rejected.
- 7) ☒ Claim(s) 9-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Reissue Applications*

1. The information disclosure statement filed 10/15/2001 and 1/22/2002 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. All the U.S. Patent Documents, one Non U.S. Documents, WO 96/26678 and five other materials including "Operative Principles of Ilizarov," "Advances in Ilizarov Apparatus Assembly," "Transosseous Osteosynthesis," "Monticelli Spine...", and "Techniques in Orthopaedics..." are considered (see PTO-1449). All the rest of the None U.S. Documents and other materials not listed above have not been considered.
2. The amendment filed 02/25/2002 proposes amendments to the specification and claims 9-14 and new added claims 15-35 that do not comply with 37 CFR 1.173(b), which sets forth the manner of making amendments in reissue applications. A supplemental paper correctly amending the reissue application is required. The amendments do not comply with 37 CFR 1.173(b) because all newly added materials are not underlined and all removed materials are not in brackets [] relative to the claims in the patent. Claims 15-35 rejected under 35 U.S.C. 251 as being broadened in a reissue application filed outside the two year statutory period. For example, the limitation "points" instead of "the attachment structure" broaden the original claim; the limitations "whereby said attachment structure are substantially positioned along an arc

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of  $\alpha^\circ$  of a circle defined by a diameter  $d$ , and the chord length between adjacent attachment structures is substantially equal to  $l$ , and

$$d \approx l \left( \sqrt{\frac{1}{\tan^2\left(\frac{\alpha}{2n}\right)}} + 1 \right)$$

and whereby the diameter  $d$  for each plate within the system is unique, and the value for  $n(360/\alpha)$  for each consecutive plate diameter  $d$  in the system is a multiple of 3 are taken out from the original claim thus the claim is broader;

A claim is broader in scope than the original claims if it contains within its scope any conceivable product or process which would have infringed the original patent. A claim is broadened if it is broader in any one respect even though it may be narrower in other respects.

1. Claims 1-14 are <sup>allowable</sup>~~allowed~~ because the prior art fails to disclose or suggest: an orthopedic spatial fixation system for holding bone parts including a plurality of fixation plates, each including a body portion having  $n$  attachment structures positioned therein, wherein the attachment structure are substantially positioned along an arc of  $\alpha^\circ$  of a circle defined by a diameter  $d$ , and the chord length between adjacent attachment structures is substantially equal to  $l$ , and

$$d \approx l \left( \sqrt{\frac{1}{\tan^2\left(\frac{\alpha}{2n}\right)}} + 1 \right)$$

and whereby the diameter  $d$  for each plate within the system is unique, and the value of  $n(360/\alpha)$  for each consecutive plate diameter  $d$  in the system is a multiple of 3.


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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is (703) 306-3421. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

(Jackie) Tan-Uyen T. Ho  
November 15, 2002

  
MICHAEL J. MILANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700